

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

SONJA NAOMI STRYKER,
Appellant.

No. 38439-6-II

UNPUBLISHED OPINION

Van Deren, C.J. — Sonja Stryker appeals her juvenile adjudication for second degree unlawful possession of a firearm,¹ arguing that the State’s evidence of possession was insufficient. We reverse and remand to vacate and dismiss.

FACTS

Between July 21, 2008, and August 18, 2008, Sonja; her brother, M.S.; and his friend, S.W., entered their neighbor’s home three times without permission and stole approximately \$400 in coins.² Sonja, M.S., and their mother, Dawn Stryker,³ lived on the same property as the

¹ Former RCW 9.41.040(2)(a)(iii) (2005).

² We refer to two juvenile witnesses by their initials to protect their rights as minors under RCW 7.69A.030(4). At the time, Sonja, M.S., and S.W. were ages 17, 12, and 10, respectively.

³ Because they share the same last name, we refer to Sonja Stryker and her mother, Dawn Stryker, by their first names. We mean no disrespect.

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neighbor, David Michalski, in old military blockhouses. Michalski vacated his property in early June because of a restraining order, leaving most of his possessions behind. S.W. testified at trial that they entered Michalski's home using a key that he believed Sonja had taken from Dawn but he was not certain how the key was obtained.

After M.S. initially entering Michalski's home with Sonja, he began taking the key from her room. M.S. and S.W. entered Michalski's home without Sonja on five more occasions. One time, they wrote their names on the walls using spray paint and took two .22 caliber rifles and live ammunition. S.W. testified that M.S. hid the rifles under Sonja's bed; however, S.W. was not certain that she knew the guns were under her bed.

While Dawn was gone, S.W. and M.S. loaded Michalski's rifles and fired them in M.S.'s backyard. S.W. fired at a tree and M.S. shot at Michalski's windows. Sonja heard the gunshots and went outside to investigate.

The record is unclear whether Sonja took the rifles from the boys. S.W. testified that Sonja asked what they were doing and then went back inside the house. But S.W.'s father, Jeffrey Baylies, and his fiancée, Cara Long, testified that, when they confronted Sonja about the rifles, Sonja said that she took them from the boys. No one ever saw Sonja with the rifles and she did not testify at her juvenile hearing.

Acting on a tip from a friend, Michalski returned to his home on August 18, 2008, accompanied by a neighbor and Kitsap County Deputy Sheriff Mark McVey and discovered his home had been vandalized. There were guns, "parts of guns, bullets jammed in guns, ammunition laying everywhere." Report of Proceedings at 60. They also found the first names of S.W. and M.S. painted on the walls. Michalski also noticed that about \$400 in coins and two rifles were

missing.

McVey questioned M.S. and Dawn about the burglary and vandalism. Dawn “emphatically denied that she had [] knowledge of the guns or whatever was going on.” RP at 94. But McVey arrested M.S. based on his statements. After arresting and booking M.S., McVey went to S.W.’s residence and “spoke to him and his parents about the situation.” RP at 83. Based on his conversation with S.W., McVey returned to the Stryker household to speak with Sonja and Dawn. Sonja and Dawn met McVey at the front door. McVey looked into the house and saw Dawn remove the rifles from behind a bookcase⁴ about 15 feet from the door.

The State charged Sonja with residential burglary and second degree unlawful possession of a firearm. Following a juvenile proceeding, the trial court adjudicated Sonja guilty of both crimes.

Sonja appeals.

ANALYSIS

Sufficiency of the Evidence

Sonja challenges the trial court’s finding of fact⁵ that she intentionally controlled and possessed the rifles, arguing that she “had only transitory passing control” over them that is insufficient to prove dominion and control. Br. of Appellant at 5. Specifically, she contends that “[t]here was no testimony that [she] knew the guns were under her bed and the only testimony indicating that [she] ever touched the guns was when [she] took the guns from the boys and gave

⁴ Nothing in the record explains how the rifles ended up behind the bookcase.

⁵ Finding of fact IV states, “On or between July 18, 2008 and August 18, 2008, Sonja Str[y]ker was under the age of 18. During that period, Sonja Str[y]ker intentionally took control of firearms and possessed them in Kitsap County, Washington.” Clerk’s Papers at 26.

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them to her mother.” Br. of Appellant at 5. The State argues that Sonja’s possession was not transitory because she intentionally took the guns from the boys and gave them to her mother.

We agree with Sonja.

A. Standard of Review

We review a trial court’s criminal findings of fact for substantial evidence; that is, a quantum of evidence sufficient to persuade a fair-minded, rational individual that a finding is true. *Hegwine v. Longview Fibre Co., Inc.*, 162 Wn.2d 340, 352-53, 172 P.3d 688 (2007); *State v. Carlson*, 143 Wn. App. 507, 519, 178 P.3d 371, *review denied*, 164 Wn.2d 1026 (2008). When reviewing a challenge to the sufficiency of the evidence, we determine whether any rational fact finder could have found the essential elements of the charged crime beyond a reasonable doubt, viewing the trial evidence in the light most favorable to the State. *State v. Brockob*, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). An insufficiency claim “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We view direct and circumstantial evidence as equally reliable, and we “defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) *abrogated in part on other grounds*, *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

B. Second Degree Unlawful Possession of a Firearm

To adjudicate Sonja guilty of second degree unlawful possession of a firearm, the State had to prove beyond a reasonable doubt that she knowingly possessed a firearm in Washington and was under the age of 18. Former RCW 9.41.040(2)(a)(iii) (2005); *see* 11A Washington

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Practice: Washington Pattern Jury Instructions: Criminal 133.02.04, at 577 (3d ed. 2008).⁶

Possession entails more than a passing control that is only a momentary handling. *State v. Staley*, 123 Wn.2d 794, 800-01, 872 P.2d 502 (1994). Possession can be actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). A person has actual possession when he or she physically possesses the item. *Callahan*, 77 Wn.2d at 29. A person has constructive possession when he or she has dominion and control over the item. *Callahan*, 77 Wn.2d at 29. Dominion and control need not be exclusive but we are reluctant to conclude that one person has constructive possession based on circumstantial evidence “when undisputed direct proof places exclusive possession in some other person.” *Callahan*, 77 Wn.2d at 31-32.

We determine whether a person has dominion and control over an item by considering the totality of the circumstances. *State v. Alvarez*, 105 Wn. App. 215, 221, 19 P.3d 485 (2001). We consider facts including the defendant’s motive to possess the item; the quality, nature, and duration of the possession and why it terminated; whether another person claimed ownership of the item; and the defendant’s dominion and control over the premises. *See, e.g., Staley*, 123 Wn.2d at 801; *Callahan*, 77 Wn.2d at 30-31; *State v. Summers*, 107 Wn. App. 373, 386, 28 P.3d 780 (2001), 43 P.3d 526 (2002); *State v. Bowman*, 8 Wn. App. 148, 153, 504 P.2d 1148 (1972);

⁶ Former RCW 9.41.040(2)(a) states in relevant part:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

.....

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042.

RCW 9.41.042 lists nine exceptions to former RCW 9.41.040(2)(a)(iii) that are inapplicable to the present case.

State v. Werry, 6 Wn. App. 540, 548, 494 P.2d 1002 (1972). With respect to this last factor, we deem that minors living with their parents do not have dominion and control over the home or the items inside, absent additional evidence. *State v. G.M.V.*, 135 Wn. App. 366, 374, 144 P.3d 358 (2006), *review denied sub nom.*, *State v. Vargas*, 160 Wn.2d 1024 (2007). Here, as a minor living with her mother, the State must prove Sonja's dominion and control over the rifles themselves, not the premises.

Sonja relies on *Callahan* for support. In *Callahan*, police found drugs⁷ near the defendant while searching a houseboat where he was a guest and Callahan admitted to handling the drugs earlier that day. 77 Wn.2d at 28. Our Supreme Court held that his admission alone was not sufficient to demonstrate actual possession "since possession entails actual control, not a passing control which is only a momentary handling." *Callahan*, 77 Wn.2d at 29.

When reviewing the totality of the circumstances to determine whether Callahan had dominion and control, the *Callahan* court considered evidence that he had stayed on the houseboat for a few days, that he had some personal belongings on the houseboat, that police found him sitting near the drugs, and that he admitted to handling the drugs earlier that day. 77 Wn.2d at 31. Moreover, Callahan did not have dominion and control over the premises and another person testified to owning and possessing the drugs. *Callahan*, 77 Wn.2d at 30-31. The court viewed this testimony as "undisputed direct proof" that another person had exclusive possession. *Callahan*, 77 Wn.2d 31-32.

The State attempts to distinguish *Callahan*, arguing that Callahan did not remove the

⁷ Although *Callahan* concerns drugs possession, Washington courts treat unlawful possession of drugs and unlawful possession of firearms as analogous situations. *Summers*, 107 Wn. App. at 383 n.7.

drugs from the houseboat or from the possession of another person. But the *Callahan* court held that any finding that he possessed the drugs was unreasonable because the undisputed direct evidence demonstrated that another person had exclusive possession and the evidence of Callahan's dominion and control was purely circumstantial. 77 Wn.2d at 31-32.

Here, four witnesses testified about who had possession of the rifles. First, S.W. testified that he and M.S. stole the rifles without Sonja. He denied that Sonja took the rifles from him and M.S.⁸ and was uncertain whether Sonja knew that M.S. hid the guns under her bed. The trial court found his testimony to be credible.⁹ Second, McVey testified that he questioned Dawn about the guns and that she denied any knowledge of them. But after returning to the Stryker home for further questioning, McVey saw Dawn remove the guns from behind a bookcase and bring them to him. Third, Long said that Sonja admitted to taking the rifles from the boys and giving them to her mother. Finally, Baylies's testimony matched Long's, and their testimony is the only evidence that Sonja ever handled the guns. The trial court found Long's testimony unbiased and credible and based its finding on her testimony.¹⁰

⁸ He testified that "[Sonja] just walked out, asked us what we were doing. And I told her that we were firing the guns, and she just pretty much went back inside. She didn't take them." RP at 17.

⁹ Although the trial court found S.W. to be "very credible," it did not appear to consider his testimony on the issue of possession. RP at 103.

¹⁰ The trial court stated:

I found Ms. Long's testimony to be credible. I don't find that there is any bias from Ms. Long's testimony, and I find that the detail that she provided to be convincing and credible.

So based upon the admission from Sonja that she did take the guns and that she gave them to her mother, that, in effect, puts her in possession of the firearms, and therefore, that would satisfy the elements of Count II. And so I must find that Sonja committed the crime of unlawful possession of a firearm in the second degree.

RP at 106-07.

But the totality of the circumstances shows that Sonja's possession of the firearms was brief. *See Staley*, 123 Wn.2d at 801-02; *Callahan*, 77 Wn.2d at 30-31. As a minor, she did not have dominion and control over the guns merely because they were in her home. *G.M.V.*, 135 Wn. App. at 374. And undisputed direct evidence demonstrates that Dawn and the boys had actual possession of the rifles. *See Callahan*, 77 Wn. App. at 31-32.

Sonja's admission to Long and Baylies is similar to Callahan's admission to the police. Both amount to only a momentary handling or passing control. *See Callahan*, 77 Wn.2d at 28-29. "[S]uch actions are not sufficient for a charge of possession since possession entails actual control, not a passing control which is only a momentary handling." *Callahan*, 77 Wn.2d at 29. Although S.W. did not claim ownership as did the *Callahan* witness, S.W.'s testimony is direct and undisputed evidence that the boys, not Sonja, possessed the guns. And Dawn's actions to retrieve the guns from behind a bookcase are direct and undisputed evidence that Dawn, not Sonja, had possession of the guns. Viewed in the light most favorable to the State, Sonja's statement that she took the gun from the boys and gave them to her mother is insufficient to persuade a fair-minded, rational person that Sonja took dominion and control over the firearms and the State failed to prove this element beyond a reasonable doubt.

"Retrial following reversal for insufficient evidence is 'unequivocally prohibited' and dismissal is the remedy." *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (quoting *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996)). Therefore, we reverse her adjudication and remand for vacation and dismissal without reaching Sonja's remaining issues.

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Reversed and remanded to the trial court to vacate and dismiss.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C.J.

We concur:

Houghton, J.

Bridgewater, J.